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5 Attorneys for Defendants
CITY OF OAKLAND and RICHARD WORD

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

10 FLOYD ARMBRESTER and ZILLION
CASH,

Case No. C 02 2102 VRW

11 || Plaintiffs.

ANSWER OF CITY OF OAKLAND, RICHARD WORD TO COMPLAINT

12 || v

13 CITY OF OAKLAND, a municipal
14 corporation; RICHARD WORD, in his
15 capacity as Chief of Police for the CITY
OF OAKLAND; Oakland police officers,
DOES 1 through 25, inclusive.

Defendants

18 The CITY OF OAKLAND and RICHARD WORD ("Defendants"), hereby answer,
19 object and otherwise respond to the Complaint herein as follows.

JURISDICTION

21 1. Defendants admit that this court has jurisdiction over this matter. Defendants deny
22 each and every remaining allegation contained in paragraph 1.

PARTIES

24 2. Defendants lack information or belief sufficient to enable them to answer
25 paragraphs 2, 4,5, 6, 7, 8, 9 of the Complaint and based on this lack of information and
26 belief deny each and every allegation contained therein.

1 3. Defendants admit each and every allegation set forth in paragraph 3 of the
2 Complaint.

3

4 **STATEMENT OF FACTS**

5 4. Defendants deny each and every allegation set forth in paragraphs 10, 11, 12, 14,
6 15, 16, 19 and 20 of the Complaint.

7 5. Defendants lack information or belief sufficient to enable them to answer
8 paragraphs 13 of the Complaint and based on this lack of information and belief deny each
9 and every allegation contained therein.

10

11 **DAMAGES**

12 6. Defendants deny each and every allegation set forth in paragraphs 21, 22, 23, 24
13 and 25 of the Complaint.

14

15 **FIRST CAUSE OF ACTION**

16 7. In response to paragraph 26 of the Complaint on file herein, defendants incorporate
17 herein, by this reference as though fully set forth at length, their answers to paragraphs 1
18 through 25.

19 8. Defendants deny each and every allegation contained in paragraph 27 of the
20 Complaint.

21

SECOND CAUSE OF ACTION

22 9. In response to paragraph 28, of the Complaint, defendants incorporate herein, by
23 reference, as though fully set forth at length, their answers to paragraphs 1 through 27 of
24 the Complaint.

25 10. Defendants deny each and every allegation contained in paragraphs 29 and 30 of

26 -2-

CW

1 the Complaint.

2
THIRD CAUSE OF ACTION

3 11. In response to paragraph 31 of the Complaint, defendants incorporate herein, by
4 reference, as though fully set forth at length, their answers to paragraphs 1 through 30 of
5 the Complaint.

6 12. Defendants deny every allegation contained in paragraphs 32 and 33 of the
7 Complaint.

8
FOURTH CAUSE OF ACTION

9 13. In response to paragraph 34 of the Complaint, defendants incorporate herein by
10 reference, as though fully set forth their answers to paragraphs 1 through 33 of the
11 Complaint.

12 14. Defendants deny every allegation contained in paragraphs 35, 36, 37 and 38 of the
13 Complaint on file herein.

14
FIFTH CAUSE OF ACTION

15 15. In response to paragraph 39 of the Complaint, defendants incorporate herein by
16 reference, as though fully set forth their answers to paragraphs 1 through 38 of the
17 Complaint.

18 16. Defendants deny every allegation contained in paragraphs 40 and 41 of the
19 Complaint.

20
SIXTH CAUSE OF ACTION

21 17. In response to paragraph 42 of the Complaint, defendants incorporate herein by
22 reference, as though fully set forth their answers to paragraphs 1 through 41 of the
23 Complaint.

24 18. Defendants deny every allegation contained in paragraphs 43 and 44 of the

1 Complaint.

2 **SEVENTH CAUSE OF ACTION**

3
4 19. In response to paragraph 45 of the Complaint, defendants incorporate herein by
5 reference, as though fully set forth their answers to paragraphs 1 through 44 of the
6 Complaint.

7 20. Defendants deny every allegation contained in paragraphs 46, 47, 48 and 49 of the
8 Complaint.

9 **EIGHTH CAUSE OF ACTION**

10 21. In response to paragraph 50 of the Complaint, defendants incorporate herein
11 reference, as though fully set forth their answers the paragraphs 1 through 49 of the
12 Complaint.

13 22. Defendants deny every allegation contained in paragraphs 51 and 52 of the
14 Complaint.

15 **NINTH CAUSE OF ACTION**

16 23. In response to paragraph 53 of the Complaint, defendants incorporate herein
17 reference, as though fully set forth their answers the paragraphs 1 through 51 of the
18 Complaint.

19 24. Defendants deny every allegation contained in paragraphs 54 and 55, of the
20 Complaint.

21 **AFFIRMATIVE DEFENSES**

22 I.

23 AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,
24 defendants allege that the Complaint fails to state a cause of action against these
25 defendants.

1

AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,
defendants, on information and belief, allege that plaintiff was careless and/or negligent in
or about the events alleged in the Complaint, and assumed the risks of the events or
accident, and said conduct was the proximate cause of the injuries and damages alleged.

1

7 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,
8 defendants allege, on information and belief, that plaintiff did not exercise ordinary care,
9 caution, or prudence to avoid the alleged event and/or accident; consequently, the
10 subsequent injuries or damages, if any, sustained by plaintiff was proximately caused by
11 and contributed to by plaintiff's comparative negligence, and any damages he might
12 otherwise be entitled to should be proportionately reduced by the degree of plaintiff's
13 negligence.

IV.

15 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,
16 defendants allege that the injuries and damages plaintiff complains of resulted from the
17 acts and/or omissions of others, or acts of God, and without any fault on the part of
18 defendants.

v.

20 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
21 defendants allege that any party or individual who was negligent and/or contributed to the
22 alleged injuries and damages was not acting as its agent or with its knowledge or within
23 the course and/or scope of employment with defendant CITY OF OAKLAND.

vi.

25 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,

1 defendants allege that this action is barred by all applicable Government Code immunities,
2 including, but not limited to, sections 815 through 900. Said sections are pleaded as
3 though fully set forth herein.

vii.

5 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
6 defendants allege that they are not liable for punitive damages pursuant to Government
7 Code section 818.

viii.

9 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,
10 defendants allege that all of the actions of defendants were undertaken in good faith and
11 with the reasonable belief that such actions were valid, necessary, reasonable, lawful and
12 constitutionally proper, entitling defendants to the qualified immunity of good faith.

IX.

14 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,
15 defendants allege that, if they in any fashion caused the injuries or damages alleged,
16 although such liability is expressly denied herein, their acts and/or omissions were
17 reasonable and privileged.

x.

19 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
20 defendants allege, on information and belief, that plaintiff failed to mitigate damages.

xi.

22 AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
23 defendants allege that, to the extent that plaintiff alleges or asserts matters not contained
24 in a legally sufficient claim filed by him, this action is barred by the claims requirements set
25 forth in Government Code Section 905 et seq.

xii.

AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
defendants allege that this action is barred by all applicable statutes of limitations.

WHEREFORE, defendants pray that:

1. Plaintiffs take nothing by reason of their complaint;
 2. Defendants have judgment against plaintiffs;
 3. Defendants be awarded their costs of suit incurred herein, including costs; and
 4. The Court award such other relief as it may deem proper.

Dated: September 12, 2002

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Assistant City Attorney
STEPHEN Q. ROWELL, Deputy City Attorney

By: /s/
Attorneys for Defendants
OFFICER M. PATTERSON and SERGEANT REILLY

PROOF OF SERVICE

Floyd Armbrester, et al. v. City of Oakland, et al.

United States District Court -Northern District No: C02 2102VRW

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date below, I served the within documents:

PROOF AND CAPTION

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
 - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
 - by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
 - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
 - by causing such envelope to be sent by Federal Express/ Express Mail.

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I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 12, 2002, at Oakland, California.

/s/

Reese Johnson